

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

08/07/2002

CLERK OF THE COURT
FORM V000A

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

CV 2002-005989

FILED: _____

NICKOLA JURKOVIC

NICKOLA JURKOVIC
3855 W GLENDALE
PHOENIX AZ 85051-0000

v.

DANIEL MURRAY, et al.

DANIEL MURRAY
2141 W VISTA #1
PHOENIX AZ 85021-0000

LAURA LOHR
2141 W VISTA #1
PHOENIX AZ 85021-0000
PHX JUSTICE CT-CENTRAL
REMAND DESK CV-CCC

MINUTE ENTRY

This Court has jurisdiction of this Civil Appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the trial Court, exhibits made of record and the Memoranda submitted.

The rules clearly require that a transcript of the record of the proceedings shall be prepared in all cases appealed to the Superior Court, except where other methods are established

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by Superior Court Local Rules.¹ When matters are not included in the record on appeal, the missing portion of the record is presumed to support the decision of the trial court.² However, even where no transcript is forwarded on appeal, this court is required to consider questions of law presented by the record.³ In the case at hand, Appellant did not order a record, nor did this court receive a transcript or tape of the proceedings from the court below.

Appellant contends that the trial court erred in failing to consider Appellants' testimony of the breach of the lease agreement by Appellee, Nickola Jurkovic. Appellants claim the trial court failed to consider their evidence of the "true lease agreement" that was agreed to by the parties. Appellants also contend that there was insufficient evidence to support the trial judge's ruling against them. However, the appealing party has a duty to request that a record be made, to order the record be prepared and to pay the costs of a transcript where that party claims that the trial court's ruling was not justified by the evidence presented at trial.⁴ Where no transcript or evidence is made part of the record on appeal, a reviewing court will not question the sufficiency of evidence to sustain the ruling.⁵

Finding no error,

¹ Rule 11(e)(2), Superior Court Rules of Appellate Procedure-Civil.

² *State v. Mendoza*, 181 Ariz. 472, 474, 891 P.2d 939, 941 (1995); *Baker v. Baker*, 183 Ariz. 70, 72, 900 P.2d 764, 766 (1995); *State v. Zuck*, 134 Ariz. 509, 513, 658 P.2d 162, 166 (1982); *In re Mustonen's Estate*, 130 Ariz. 283, 284, 635 P.2d 876, 877 (App.1981).

³ *Smith v. Smith*, 115 Ariz. 299, 564 P.2d 1266 (App. 1977); *Orlando v. Northcutt*, 103 Ariz. 298, 441 P.2d 58 (1968).

⁴ *Retzke v. Larson*, 166 Ariz. 446, 449, 803 P.2d 439, 442 (1990); *Rapp v. Olivo*, 149 Ariz. 325, 330, 718 P.2d 489, 494 (App.1986); *Rancho Pescado, Inc. v. Northwestern Mut. Life Ins. Co.*, 140 Ariz. 174, 189, 680 P.2d 1235, 1250 (App.1984).

⁵ *American Exp. Travel Related Services Co., Inc. v. Parmeter*, 186 Ariz. 652, 655, 925 P.2d 1369, 1372 (1996); *Aguirre v. Robert Forrest, P.A.*, 186 Ariz. 393, 397, 923 P.2d 859, 863 (1996); *Boltz & Odegaard v. Hohn*, 148 Ariz. 361, 365, 714 P.2d 854, 858 (1985); *Riley v. Jones*, 6 Ariz.App. 120, 122, 430 P.2d 699, 701(1967).

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IT IS ORDERED affirming the judgment and order of the
Central Phoenix Justice Court.

IT IS FURTHER ORDERED remanding this case to the Central
Phoenix Justice Court for all future and further proceedings.

Date: August 7, 2002

/S/ HONORABLE MICHAEL D. JONES

JUDICIAL OFFICER OF THE SUPERIOR COURT